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June 3, 2008

Dear Xxxxx:

This letter is in response to your letter dated November 8, 2007, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLRs”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I spoke with a supervisor in the sales tax office in an effort to establish our sales tax rate. We are ABC. Our corporate headquarters is located in CITY/STATE and we have an office in CITY, IL. We provide market analyses for residential real estate developers. This market analysis is sold in the form of a CD as part of a quarterly subscription service. A formal contract is composed in the IL office and forward [sic] to the CITY/STATE office. The quarterly subscription CD is *billed* from CITY/STATE and *shipped* from CITY/STATE directly to the client in IL.

SUPERVISOR stated that our sales tax liability in the state of IL is 6.25%. We also subscribe to an online tax service that calculates our liability at the same rate. We would like this formally confirmed in writing for audit purposes.

Please call me if you have any questions.

Thank you,

DEPARTMENT’S RESPONSE:

In general, the imposition of the various local sales taxes in Illinois takes effect when "selling" occurs in a jurisdiction imposing a tax. The Department's opinion is that the most important element of selling is the seller's acceptance of the purchase order. Consequently, if a purchase order is accepted in a jurisdiction that imposes a local tax, that tax will be incurred. See 86 Ill. Adm. Code 270.115(b).

The tax rate is fixed by the location of the seller, not the delivery location. The fact that the item being sold is shipped from out-of-State or from another Illinois location is immaterial for purposes of local taxes if the sale occurs through order acceptance in an Illinois jurisdiction imposing a local tax. For these transactions the local tax will be incurred.

If a purchase order is accepted outside the State, but the property being sold is located in an inventory of the retailer which is located in an Illinois jurisdiction that has imposed a local tax (see, for example, Section 270.115(b)(3)), then the location of the property at the time of sale will determine where the seller is engaged in business for the purpose of determining the imposition of applicable local sales taxes. In situations in which the retailer has nexus in Illinois, but both the purchase order acceptance and the location of the property being purchased are outside of the State of Illinois, such sales would only be subject to the Illinois Use Tax at the rate of 6.25%.

Although the regulation cited above (86 Ill. Adm. Code 270.115) deals with the municipal home rule taxes, the principles outlined in this regulation apply to all local taxes administered by the Department. For the retail sales as described in your letter, the local taxes applicable to those sales will depend upon where your company is actually accepting those orders.

The Department maintains an Illinois Sales Tax Reference Manual, ST-25 (April 1, 2008). The Manual is located on the Department's website. The website also contains a Tax Rate Finder that allows the user to select the jurisdiction and find the effective tax rates. For example, these tools indicate that CITY, Illinois is located in two counties: Kane County and Cook County. The Retailers' Occupation Tax rate for general merchandise purchased in the portion of CITY lying in Kane County is 7.75%, and the Use Tax rate is 6.25%. The Retailers' Occupation Tax rate for general merchandise purchased in the portion of CITY lying in Cook County is currently 8.75% and the Use Tax rate is 6.25%. Please note that the tax rate for the portion of CITY lying in Cook County will rise on July 1, 2008, to 9.75%.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Richard S. Wolters
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